

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 18 September 2023

Language: English

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**Public Redacted Version of Veseli Defence Response to Prosecution Request
for Rule 107 Measures for W04147 and W04868**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence") hereby files this Response to the Prosecution request for Rule 107 measures for W04147 and W04868 ("Request").¹

II. SUBMISSIONS

2. The Prosecution's Rule 107 provider seeks to limit the cross-examination of W04147 and W04868 to the following, defined, topic areas:
 - a. The structure, command and operations of the KLA;
 - b. The roles and responsibilities of particular individuals within the KLA, including their involvement in prisoner releases; and
 - c. General information about incidents involving detentions and mistreatment by individuals associated with the KLA or other topics covered by the witness statement.²
3. While cognisant that Rule 107 plays an important role in safeguarding protected information, the extent to which such information is subject to protection cannot (and should not) supersede the Accused's right to pose questions on central aspects of their own case. The Defence submits that there is a real risk that Mr Veseli's fair trial rights – particularly, his right to examine, or have examined, the witnesses against him – will be severely prejudiced by these proposed limitations, depending on how they are applied in practice.³

¹ F01764, *Prosecution request for Rule 107 measures for W04147 and W04868*, 4 September 2023, confidential.

² F01764, paras 6-7.

³ See, Article 21(4)(f) of the Law.

4. The Defence understands that similar considerations have been raised by the Thaçi, Selimi and Krasniqi Defence teams.⁴ It fully supports their submissions in this regard and maintains that Mr Veseli should not be inhibited from asking questions of Prosecution witnesses which address fundamental aspects of Mr Veseli's own case, whilst, at the same time, casting doubt over the Prosecution's case theory.
5. At present, the Veseli Defence intends to cross-examine W04147 on matters pertaining to Mr Veseli's external intelligence function from November 1998 until the end of the war. The Parties have known about the centrality of this issue to Mr Veseli's defence since, at least, the filing of his pre-trial brief in October 2022, in which it set out its case as regards the purpose of the intelligence function established by the KLA General Staff in November 1998 to which Mr Veseli was appointed:

[T]he SPO has entirely misunderstood the purpose and functions of Mr Veseli's appointment. It had nothing to do with internal intelligence within Kosovo, liaison on intelligence with any KLA volunteer locally appointed to an intelligence function, seeking out collaborators, or with any aspect of KLA internal discipline. Mr Veseli's role as head of this nascent department was strictly confined to external intelligence liaison, namely liaison outside Kosovo with the intelligence agencies of certain NATO member States.⁵

6. Pending a more scrupulous analysis of W04147's proposed Rule 154 Materials (notified recently on 14 September 2023),⁶ the Defence believes that the witness' role as [REDACTED] places him in a uniquely authoritative position to

⁴ The Defence notes that whilst the Thaçi, Krasniqi and Selimi Response has yet to be notified through Legal Workflow at the time that this Response was submitted, the Defence has seen a pre-final version and agrees with the submissions contained therein.

⁵ F01052/COR, *Corrected Version of the Pre-Trial Brief on Behalf of Kadri Veseli, With Confidential Annexes 1-3* (dated 21 October 2022, F01052), 25 October 2023, confidential, para. 40.

⁶ See, F01788/A04, W04147: *Annex 4 to Prosecution motion for admission of evidence of Witnesses W00208, W02082, W02475, W04147, W04325, W04491, and W04753 pursuant to Rule 154*, 14 September 2023, confidential.

comment upon the essentially external nature of Mr Veseli's role as the KLA's intelligence liaison.

7. Logically speaking, the issue of Mr Veseli's role as the KLA's intelligence liaison would appear to be encompassed by points (a) and (b) of paragraph 2 above and, therefore, falling within the scope of topics deemed acceptable by the provider for the purposes of cross-examination. It follows that the proposed limitation does not, at first glance, limit Mr Veseli's defence. However, if this issued is deemed to fall outside the scope of the Rule 107 provider's proposed limitations, the Defence submits that Mr Veseli would be deprived of the opportunity to elicit favourable evidence relevant to the crimes with which he has been charged and to put a central element of his case to a witness testifying for the SPO.
8. Moreover, the Defence observes that the absence of information about Mr Veseli's intelligence role from the Rule 154 materials of a similar witness – namely, W03724 – did not inhibit that witness from providing elucidating testimony on the issue during cross-examination.⁷ In fact, W03724 told that Court that:
 - a. The KLA must have had a representative outside of Kosovo talking directly to the Americans, British and German intelligence representative in preparation for Western military intervention;⁸
 - b. He was aware of planning, preparation and contingency planning for a potential bombing campaign against Serbia that was taking place within the United Kingdom from a colleague of his who worked in the United Kingdom's army military intelligence;⁹

⁷ See generally, Transcript, [REDACTED].

⁸ Transcript, [REDACTED].

⁹ Transcript, [REDACTED].

- c. Although he did not have detailed knowledge about those discussions, he learned that Kadri Veseli was the KLA representative involved in those secret discussions and with the Intelligence agencies of NATO states in preparation for Western military intervention;¹⁰
 - d. W04147 was [REDACTED];¹¹ and
 - e. In broad terms, [REDACTED] was known to liaise with “the KLA at very high levels.”¹²
9. Noting that W04147 effectively confirms points (d) and (e) in his Rule 154 Statement,¹³ the combined effect of the above-mentioned information stemming from W03724’s testimony – an individual whom the SPO relied upon as a witness of truth – only serves to further the Defence’s assertion that it has a well-founded and legitimate interest in questioning W04147 on Mr Veseli’s external intelligence liaison.
10. Should the Defence be prevented from pursuing such lines of questioning and putting a central element of the Defence case to the witness, the Defence echoes the submissions made by the other Accused and contends that the exclusion of W04147’s testimony would be justified on the basis that the prejudice caused to the Accused’s fair trial rights substantially outweighs any probative value with which his testimony might be associated.
11. As for W04868, the Defence submits that the Request is premature. Whereas the Defence was provided late notice of the Rule 154 evidence of W04147, no such notice has been provided for W04868. As matters stand, the Defence does not know when the Prosecution seeks to call W04868, nor is it privy to the

¹⁰ Transcript, [REDACTED].

¹¹ Transcript, [REDACTED].

¹² See for instance, Transcript, [REDACTED].

¹³ 075522-075551, paras 3, 7 and 19-24.

proposed Rule 154 materials the Prosecution seeks to tender with the witness. It follows that the Defence is not in a position to meaningfully respond to the merits of the Request and asks that the Trial Panel defer its decision until the Prosecution has provided the Parties and Participants with the requisite, timely, notice.

III. CONCLUSION

12. In light of the foregoing, the Defence:

- a. Reiterates its support for the Thaçi, Selimi and Krasniqi response to the Request;
- b. Requests that, in the event that questioning of the aforementioned topic is not permitted by the Rule 107 provider, the Trial Panel considers the exclusion of W04147's evidence; and
- c. Defer its Decision regarding W04868 until the Prosecution provides notice of the witness' scheduling and proposed Rule 154 materials.

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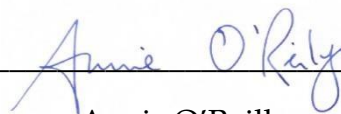
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